

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

STUDENT RESOURCE CENTER, LLC,

Plaintiff,

v.

EASTERN GATEWAY COMMUNITY
COLLEGE,

Defendant.

Civil Action 2:22-cv-2653
Chief Judge Algenon L. Marbley
Magistrate Judge Chelsey M. Vascura

RULE 26(f) REPORT

Pursuant to Federal Rule of Civil Procedure 26(f), a meeting was held on 10/12/2022 and was attended by:

Robert C. Folland, counsel for plaintiff Student Resource Center, LLC (“SRC”),

C. David Paragas, counsel for plaintiff, SRC,

Justin M. Alaburda, counsel for defendant Eastern Gateway Community College (“EGCC”), and

Adam D. Fuller, counsel for defendant, EGCC,

Counsel represent that, during the meeting, they engaged in a meaningful attempt to meet and confer on the matters outlined below.

1. **CONSENT TO MAGISTRATE JUDGE**

Do the parties consent to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)?

____ Yes X No

2. **INITIAL DISCLOSURES**

Have the parties agreed to make initial disclosures?

X Yes ____ No ____ The proceeding is exempt under Rule 26(a)(1)(B)

3. If yes, such initial disclosures shall be made by **October 26, 2022**.

4. VENUE AND JURISDICTION

Are there any contested issues related to venue or jurisdiction?

 Yes X No

If yes, describe the issue:

If yes, the parties agree that any motion related to venue or jurisdiction shall be filed by _____.

4. PARTIES AND PLEADINGS

- a. The parties agree that any motion or stipulation to amend the pleadings or to join additional parties shall be filed by **November 30, 2022.**
- b. If the case is a class action, the parties agree that the motion for class certification shall be filed by N/A.

5. MOTIONS

- a. Are there any pending motion(s)?

 Yes X No

If yes, indicate which party filed the motion(s), and identify the motion(s) by name and docket number:

- b. Are the parties requesting expedited briefing on the pending motion(s)?

 Yes X No

If yes, identify the proposed expedited schedule:

Opposition to be filed by _____; Reply brief to be filed by _____.

6. ISSUES

Jointly provide a brief description of case, including causes of action set forth in the complaint, and indicate whether there is a jury demand:

SRC and EGCC each allege that the other has materially breached their Collaboration Agreement pertaining to the Free College Benefit Program offered by EGCC and jointly administered with SRC.

SRC has brought causes of action for: (1) declaratory judgment that SRC has not breached

the Collaboration Agreement; (2) breach of contract for failure to pay amounts owed at the time of the July 2022 preliminary injunction hearing; (3) breach of contract for failing to abide by the noncompetition provision; (4) breach of contract for failure to pay amounts owed by September 30, 2022; and (5) breach of contract for material and incurable breaches resulting in termination of contract.

In ECF No. 24, EGCC has asserted causes of action for: (1) declaratory judgment that SRC has breached the Collaboration Agreement, SRC has been overpaid and EGCC is entitled to terminate the Collaboration Agreement; (2) breach of contract for failing to timely designate new representatives to the Collaboration's Operating Committee, failing to abide by the noncompetition provision and submitting unapproved and excessive reimbursement requests for operating expenses; and (3) unjust enrichment for accepting and unlawfully retaining overpayments.

Both parties demand trial by jury.

7. DISCOVERY PROCEDURES

- a. The parties agree that all discovery shall be completed by **June 30, 2023**. The parties to schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and to file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so. If the parties are unable to reach an agreement on any matter related to discovery, they are directed to arrange a conference with the Court. To initiate a telephone conference, counsel are directed to join together on one line and then call the Magistrate Judge's chambers or provide the Court with a call -in number.
- b. Do the parties anticipate the production of ESI? X Yes No

If yes, describe the protocol for such production:

The parties are currently negotiating a protective order with respect to the production of ESI related to this case. To the extent the parties are unable to reach an agreement on such protocol, they will seek the Court's intervention.

- c. Do the parties intend to seek a protective order or clawback agreement? X Yes No

If yes, such order or agreement shall be produced to the Court by **October 28, 2022**.

8. DISPOSITIVE MOTIONS

- a. Any dispositive motions shall be filed by **July 28, 2023**.
- b. Are the parties requesting expedited briefing on dispositive motions?
- Yes X No

If yes, identify the proposed expedited schedule:

Opposition to be filed by _____; Reply brief to be filed by _____.

9. EXPERT TESTIMONY

- a. Primary expert reports must be produced by April 19, 2023.
- b. Rebuttal expert reports must be produced by May 19, 2023.

10. SETTLEMENT

Plaintiff(s) will make a settlement demand by April 28, 2023. Defendant will respond by May 26, 2023. The parties agree to make a good faith effort to settle this case. The parties understand that this case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference. The Court refers cases to settlement throughout the year. The parties request the following month and year: **June 2023**.

In order for the conference to be meaningful, the parties agree to complete all discovery that may affect their ability to evaluate this case prior to the settlement conference. The parties understand that they will be expected to comply fully with the settlement conference orders which require, *inter alia*, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

11. RULE 16 PRETRIAL CONFERENCE

Do the parties request a scheduling conference?

X Yes, the parties would like a conference with the Court prior to it issuing a scheduling order. The parties request that the conference take place _____ in chambers _____ by telephone. **Telephonic conference set via telephone before Magistrate Judge Vascura via telephone on October 19, 2022 at 4:00.**

____ No, a conference is not necessary; the Court may issue a scheduling order after considering this Report.

12. OTHER MATTERS

Indicate any other matters for the Court's consideration:

Plaintiff's Position:

SRC filed its Amended Complaint as of course (ECF# 28) on October 10, 2022. Pursuant to FRCP 15 and Court Order (ECF# 27) said Amended Complaint was timely filed without need for leave of Court. As a result of the filing of the Amended Complaint, an issue has arisen as to the need for EGCC to replead its answer and

counterclaims (ECF# 24). SRC notes that courts are divided on whether the Federal Rules of Civil Procedure require EGCC to replead its answer and counterclaims. *See, Mathews v. Ohio Pub. Emps. Ret. Sys.*, No. 2:12-CV-1033, 2014 WL 4748472, at *4 (S.D. Ohio Sept. 23, 2014) (collecting cases). Nevertheless, recent case law suggest that EGCC must replead its counterclaims to avoid their abandonment. *See, Artisan Est. Homes, LLC v. Hensley Custom Bldg. Grp., LLC*, No. 1:19-CV-566, 2021 WL 1964476 (S.D. Ohio May 17, 2021).

Once EGCC's counterclaims are properly pled, SRC will file a motion to dismiss the same. At present, SRC does not know if EGCC will replead the counterclaims. As such, SRC requests direction from the Court as to if it should file its Motion to Dismiss now or wait until after EGCC files a responsive pleading to the Amended Complaint with such counterclaims deemed abandoned unless repled.

Defendant's Position:

While EGCC has not had an adequate opportunity to research the issue (as SRC's Amended Complaint was filed less than 48 hours prior to the parties' Rule 26(f) conference), EGCC believes SRC is in default as it has not filed a pleading or motion responsive to EGCC's properly pled counterclaim within the time required by Rule 12(a)(1)(B) and plans to proceed accordingly.

Signatures:

Attorney for Plaintiff(s):

/s/ Robert C. Folland

Counsel for SRC

Bar # 0065728

Attorney for Defendant(s):

/s/ Justin M. Alaburda

Counsel for EGCC

Bar #0082139

/s/ C. David Paragas

Counsel for SRC

Bar # 0043908

/s/ Adam D. Fuller

Counsel for EGCC

Bar #0076431

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